IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4609 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K. RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 : NO

AHMEDABAD MUNICIPAL TRANSPORT SERVICE

Versus

SHAIKH AMMANULLA VASIULLA

Appearance:

MR HS MUNSHAW for Petitioner

MR DG CHAUHAN for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 24/04/2000

ORAL JUDGEMENT

Rule returnable today. Learned advocate Mr. D.G Chauhan appearing for the respondent waives service of rule. With the consent of the learned advocates, this matter is heard and decided today.

2. Heard the learned advocates at length.

3. In the present petition, the Award passed by the Labour Court, Ahmedabad in Reference No. (LCA) 1187 of 1997 dated 25th February, 1999 is challenged by the petitioner-Ahmedabad Municipal Transport Service [hereinafter referred to as, `the Transport Services'] wherein the Labour Court has granted reinstatement with continuity of service and 50% backwages for interim period and had stopped one increment without cumulative effect of the respondent workman.

4. The brief facts of the present writ petition are that, the respondent-workman was working as a Conductor in Ahmedabad Municipal Transport Services. On 29th July, 1993 when the respondent workman was on duty, his bus was checked by the Checking staff of the petitioner-Corporation. During the course of checking, it was found that four tickets of denomination of Re. 1=25p. were reissued to different groups and thus the respondent workman had misappropriated sum of Rs. 5/=. Further, on verification of the cash by the Checking Staff, it was observed that cash amounting Rs. 2=90 p. was short. On the basis of the said misconducts, the chargesheet was served upon the respondent-workman and after completion of the departmental inquiry, on 24th July, 1997, the respondent-workman was dismissed from service. That order of dismissal was challenged by the workman before the Labour Court at Ahmedabad in Reference (LCA) No. 1187 of 1997. Before the Labour Court, the statement of claim was filed by the workman concerned and the written statement was filed by the petitioner-Transport Service. After considering the evidence on record and evidence adduced by the respondent workman vide Exh. 10 and written arguments at Exh. 13, the Labour Court on merits at paragraph no. 5 has come to the conclusion that there was no bad intention on the part of the respondent-workman to reissue the four tickets of Rs. 1.25p each as there was some misprinting in the denomination of the said tickets. Considering the said aspect, the Labour Court has come to the conclusion that at the most it amounts to negligence on part of the workman concerned and it is not the case of misappropriation and/or dishonety. Before the Labour Court, the workman has not admitted the allegations and he pointed out that in reply to the show cause notice para-11 that these tickets were issued by the respondent belong to one number of each two tickets and therefore such numbers were duplicate in the block of Re. 1-25 paise denomination, and therefore, by mistake it has happened. In fact, he had not re-issued these four tickets of Re. 1-25 paise. In respect to the mis-print

of block in the denomination of Re. 1.25p, total five complaints were filed before the Management by letters dated 30.7.1997, 15.6.1993, 17.12.1993, 15.11.1992 and 3.7.1989 and in this respect, no investigation was carried out by the Transport Service, and therefore, considering all these aspects, the Labour Court has ultimately come to the conclusion that there was no misappropriation of Rs. 5/=; as alleged by the Transport Service. The Labour Court has also considered the long service of 21 years rendered by the respondent workman and had come to the conclusion that the punishment of dismissal in such circumstances is unjust, harsh and disproportionate, and therefore, while exercising powers under Sec. 11-A of the Industrial Disputes Act, 1947, the Labour Court had exercised its discretionary power in favour of the workman and considering the evidence Exh. 10 of the respondent that he remained unemployed during the interim period and petitioner has not proved gainful employment, and therefore, considering this negligence, the Labour Court has denied 50% of the backwages to the respondent and imposed punishment of stoppage of one increment without cumulative effect. But, in fact, in the observations made by the Labour Court in paragraph No. 5 at page 26, the Labour Court has observed that one increment without cumulative effect is required to be stopped, however, the said observation has not been incorporated in the final order. The Labour Court has considered the past record of the respondent workman wherein one misconduct pertains to dishonesty, four pertains to misbehaviour, 10 pertains to absenteeism and 27 are of the general nature. Now, considering the past record of the respondent workman, according to my opinion, 50% backwages awarded by the Labour Court is on the higher side, and therefore, the Award of 50% of the backwages is suitably reduced to 25% [twenty five per cent] and one increment with cumulative effect is required to be stopped. Therefore, considering the finding recorded by the Labour Court and the reasons given thereunder, according to my opinion, the Labour Court has committed error in granting 50% backwages on the ground that petitioner has not produced any record as to the past record of the respondent workman but the dismissal order was on record wherein details about his past performance and past antecedents is available there but the Labour Court has not considered it properly. Therefore, considering all these aspect of the matter, the Award passed by the Labour Court in so far as it relates to backwages and punishment in the form of stoppage of increment is required to be modified. Accordingly, the Award dated 25th February, 1999 passed by the Labour Court, Ahmedabad in Reference (LCA) No.

1187 of 1997 is modified as under :-

5. The Award dated 25th February, 1999 passed by the Labour Court, Ahmedabad in Reference (LCA) No. 1187 of 1997 is modified to the effect that the respondent workman is entitled to reinstatement in service with continuity in service and 25% [Twenty five percent] backwages for the interim period. The petitioner-Transport Service shall stop one increment of the respondent workman with cumulative effect.

6. According, this petition stands partly allowed. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

7. In view of the fact that this matter is partly allowed, the petitioner-Transport Service is directed to reinstate the respondent workman in service within a period of four weeks from today and shall arrange to pay 25% [Twenty five percent] of the backwages to the respondent workman for the interim period i.e., from the date of his dismissal 24th July, 1997 to 25th February, 1999 within a period of six weeks from the date of receipt of certified copy of this order. The petitioner-Transport Service shall also pay full backwages with consequential benefits to the respondent workman from the date of Award ie., 25th February, 1999 till the date of his actual reinstatement in service within a period of eight weeks from the date of receipt of certified copy of this judgment.

[H.K Rathod, J.]

Prakash*